

BEFORE THE DEPARTMENT
OF NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA

IN THE MATTER OF THE APPLICATION)
FOR BENEFICIAL WATER USE PERMIT) FINAL ORDER
NO. 46581-S41H BY ALEX H. WAGENFEHR)

The objections filed by the Objectors hereto are in substance the same as these previously passed upon in numerous prior dispositions. Our decisions therein control the present matter. The Bureau also requests that we incorporate the evidentiary matter in In re Brown into the present record. In effect, this incorporation has already been achieved. We rely on In re Brown et. al. for our disposition herein. Error in the seminal case taints the instant one.

WHEREFORE, the objections of the Montana Power Company and the Bureau of Reclamation are hereby ordered stricken. All other objections have been disposed of by consent of the parties.

Application for Beneficial Water Use Permit No. 46581-S41H is hereby granted to Alex H. Wagenfehr to appropriate 10 gallons per minute up to 1.25 AF for the irrigation of .5 acre more or less located in the NE SW SW of Section 28, Township 4 South, Range 4 East, in Gallatin County. In no event shall the waters provided for herein be diverted prior to May 1 of any given year nor subsequent to October 15 of any given year. The source of supply

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shall be Logger Creek, a tributary of the West Gallatin River, the waters thereof to be diverted at a point SE SW SW of Section 28, Township 4 South, Range 4 East, in Gallatin County. The priority date for this Permit shall be June 3, 1982 at 2:10 p.m.

This Permit is subject to the following express conditions, limitations, and restrictions.

A. Any rights evidenced herein are subject to all prior and existing rights, and to any final determination of such rights as provided by Montana law. Nothing herein shall be construed to authorize the Permittee to divert water to the detriment of any senior appropriator.

B. The Permittee shall in no event cause to be withdrawn from the source of supply more water than is reasonably required for the purposes provided for herein.

C. Nothing herein shall be construed to affect or otherwise reduce the Permittee's liability for damages which may be caused by the exercise of this permit.

D. The Permittee shall proceed with reasonable diligence in completing the appropriation provided for herein by actually applying the water provided for herein to the named beneficial use.

NOTICE

The Department's Final Order may be appealed in accordance with the Montana Administrative Procedures Act by filing a

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petition in the appropriate court within thirty (30) days after
service of the Final Order.

DONE this 24th day of April, 1983.

Gary Fritz
Gary Fritz, Administrator
Department of Natural Resources
and Conservation
32 S. Ewing, Helena, MT 59620
(406) 444-6605

Matt Williams
Matt Williams, Hearing Examiner
Department of Natural Resources
and Conservation
32 S. Ewing, Helena, MT 59620
(406) 444-6704

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AFFIDAVIT OF SERVICE
FINAL ORDER

STATE OF MONTANA)
) ss.
County of Lewis & Clark)

Donna K. Elser, an employee of the Montana Department of Natural Resources and Conservation, being duly sworn on oath, deposes and says that on April 25, 1984, she deposited in the United States mail, certified mail, an order by the Department on the Application by Alex H. Wagenfehr, Application No. 46581-m41H, for an Application for Beneficial Water Use Permit, addressed to each of the following persons or agencies:

1. Alex H. Wagenfehr, Canyon Rt., Box 18-B, Gallatin Gateway, MT 59730
2. Bureau of Reclamation, P.O. Box 2553, Billings, MT 59103
3. US Dept. of Interior, P.O. Box 1538, Billings, MT 59103
4. Montana Power Co., 40 East Broadway, Butte, MT 59701
5. M. Paul Stahl, Attorney, 301 First National Bank Bldg., P.O. Box 1715, Helena, MT 59624
6. Scott Compton, Bozeman Field Office (inter-departmental mail)
7. Gary Fritz, Administrator, Water Resources (hand deliver)

DEPARTMENT OF NATURAL RESOURCES AND
CONSERVATION

by Donna Elser

STATE OF MONTANA)
) ss.
County of Lewis & Clark)

On this 25th day of April, 1984, before me, a Notary Public in and for said state, personally appeared Donna Elser, known to me to be the Hearings Recorder of the Department that executed this instrument or the persons who executed the instrument on behalf of said Department, and acknowledged to me that such Department executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

John D. Gilman
Notary Public for the State of Montana
Residing at Helena, Montana
My Commission expires 12/31/87

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